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Attorney for Dannie A. GUERRERO and Tracey POUEU-GUERRERO, Plaintiffs.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

Dannie A. GUERRERO and Tracey POUEU-GUERRERO,

Plaintiffs,

v.

GREENPOINT MORTGAGE FUNDING,  
 INC., AURORA LOAN SERVICES,  
 LLC., QUALITY  
 LOAN SERVICE CORP., FINANCIAL  
 COMPANY OF AMERICA, and DOES 1-100.

Defendants.

CASE NO.: 3:09-CV-04211-JL

**PLAINTIFF DANNIE A. GUERRERO  
 and TRACEY POUEU-GUERRERO  
 REPLY TO AURORA LOAN SERVICES,  
 LLC's OPPOSITION TO PLAINTIFF'S  
 REMAND TO STATE COURT**

Date: November 18, 2009

Time: 9:30 a.m.

Courtroom: 15

Complaint Filed August 11, 2009

Complaint Removed: September 11, 2009

Trial Date: None

**I. The Core Of The Plaintiff's Case Comprises State Law And Common Law Violations.**

Plaintiff admits that there are federal issues pled as part of the Complaint, which was made clear throughout Plaintiff's Motion for Remand. However, Plaintiff's theory of the case is that Mr. and Mrs. Guerrero were intentionally misled by their broker and lender into taking a bad loan that they couldn't afford, and didn't qualify for, so that these bad actors could "cash in" on the refinance craze of 2004-2008. These are really state law tort claims, and therefore, the Federal Claims are incidental to those.

1 Rather, An Accounting, Unfair Competition, Declaratory Relief, Unfair Debt Collection,  
 2 Emotional Distress, Breach of Broker's Duty to Disclose, Slander of Title, Wrongful Foreclosure  
 3 and Rescission (which is available at California Civil Code § 1691; *see also*: §1693 regarding  
 4 tender) form the basis of the complaint. The great majority of the complaint is state law, and the  
 5 heart of the claims are of the type state courts are more interested in. The federal court is not  
 6 interested in these state property ownership issues.

7  
 8 Moreover, the state court has concurrent jurisdiction over TILA, RESPA, and RICO claims.

9 **II. Under 15 U.S.C § 1640(e), State Courts Have Concurrent Jurisdiction Over**  
 10 **TILA Claims.**

11  
 12 Under 15 U.S.C. § 1640(e), State Courts have concurrent jurisdiction over TILA claims. *Id.*  
 13 It makes good judicial sense and promotes economy for the state court to hear matters lying with  
 14 great majority in state law. The TILA claims here are incidental and do not lie at the heart of  
 15 Plaintiff's claims. Therefore, Plaintiffs respectfully move that this Court remand this action to the  
 16 Superior Court of California for the County of Sonoma.

17 **III. Under 12 U.S.C. § 2614, State Courts Have Concurrent Jurisdiction Over**  
 18 **RESPA Claims.**

19  
 20 Under 12 U.S.C. § 2614, state courts have concurrent jurisdiction over RESPA claims  
 21 arising under 12 U.S.C. §§ 2605 (servicing) , 2607 (kickbacks), 2608 (title companies --- irrelevant  
 22 to this matter). The Plaintiff's complaint alleges illegal kickbacks and servicing errors. Therefore,  
 23 the state court has concurrent jurisdiction. Plaintiffs respectfully move that this Court remand this  
 24 action to the Superior Court of California for the County of Sonoma.

25 **IV. Under *Tafflin v. Levitt*, 493 U.S. 455, State Courts Have Concurrent Jurisdiction**  
 26 **Over RICO Claims.**

27  
 28 In a unanimous opinion written by Justice O'Connor, the Supreme Court noted that under  
 29 the dual American system of state and federal sovereignty, state courts have inherent authority to  
 30

**IV. Supplemental Jurisdiction would allow the Federal Court to Hear State Claims, but The State Court is More Interested in the Case than the Federal Court.**

### III. CONCLUSION

Respectfully submitted,

**PLAINTIFF DANNIE A. GUERRERO and TRACEY POUEU-GUERRERO REPLY TO AURORA LOAN SERVICES, LLC's OPPOSITION TO PLAINTIFF'S REMAND TO STATE COURT**